

FILED
Clerk
District Court

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For The Northern Mariana Islands
By _____
(Deputy Clerk)

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**UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA,
Plaintiff,

v.

GREGGORY SABLAN KALEN;
LAWRENCE KALEN; and
MANUEL ALDAN SABLAN

Defendants.

Criminal Case No. 08-00014-002

PLEA AGREEMENT
as to defendant
LAWRENCE KALEN

Pursuant to Rule 11(c)(1)(B), the United States and LAWRENCE KALEN enter into the following plea agreement (the "Agreement"):

1. On the understandings specified below, the Office of the United States Attorney for the Districts of Guam and the Northern Mariana Islands ("this Office") will accept a guilty plea from LAWRENCE KALEN (the "defendant") to Count Three of the Indictment. Count Three charges the defendant with Distribution and Possession With Intent to Distribute a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), in connection with the defendant's distribution and possession with the intent to distribute d-methamphetamine hydrochloride in the form commonly known as "ice", on or about December 13, 2007. Count Three carries a maximum sentence of 20 years'

1 imprisonment, a maximum fine of \$1,000,000, a \$100 special assessment, and a minimum term
2 of supervised release of three years.

3 2. The defendant understands that the government intends to recommend a
4 sentence at the top of the Sentencing Guidelines range, as adopted by the Court, unless the
5 defendant agrees to cooperate by providing information to Federal law enforcement agents
6 concerning their investigation of trafficking in controlled substances in the Commonwealth of
7 the Northern Mariana Islands, including the disposition of profits from and assets relating to
8 such activities. Should the defendant elect to cooperate, the United States will make this
9 cooperation known to the Court prior to the defendant's sentencing and will make a
10 recommendation below the top of the Sentencing Guidelines range. The defendant further
11 understands that he remains liable and subject to prosecution for any Federal or local offenses
12 that he fails to fully disclose to the United States, or for any material omissions in this
13 regard. Should the defendant elect to cooperate, he understands that, in addition to constituting
14 a breach of this Agreement, any failure to provide complete and truthful information and/or
15 testimony may subject him to further prosecution.

16 3. It is understood that this Office cannot, and does not, agree not to
17 prosecute the defendant for criminal tax violations. However, if the defendant fully complies
18 with the understandings specified in this Agreement, no testimony or other information given
19 by him (or any other information directly or indirectly derived therefrom) will be used against
20 him in any criminal tax prosecution. Moreover, if the defendant fully complies with the
21 understandings specified in this Agreement, he will not be further prosecuted criminally by this
22 Office for any crimes, except for criminal tax violations, related to his participation in the
23 conspiracy to distribute d-methamphetamine hydrochloride in the form commonly known as
24 "ice" from on or about December 1, 2007 through December 13, 2007 in the District of the
25 Northern Mariana Islands, to the extent that he has disclosed such participation as of the date of
this Agreement, not involving crimes of violence. This Agreement does not provide any
protection against prosecution for any crimes except as set forth herein.

1
2 4. Except as otherwise provided in this Agreement, it is understood that this
3 Agreement does not bind any federal, state, or local prosecuting authority other than this Office.
4 This Office will, however, bring the cooperation of the defendant to the attention of other
5 prosecuting offices, if requested by him.

6 5. In consideration of the foregoing and pursuant to Sentencing Guidelines
7 § 6B1.4, the parties hereby stipulate to the following facts and application of the Sentencing
8 Guidelines:

8 Facts

9 a. On or about December 13, 2007, the defendant knowingly
10 possessed with the intent to distribute and distributed d-methamphetamine hydrochloride, in the
11 form commonly known as "ice", a Schedule II controlled substance.

12 b. The defendant knew that said substance was prohibited.

13 c. The total quantity of d-methamphetamine hydrochloride involved
14 was approximately one-hundred (100) net milligrams.

14 Offense Level

15 d. U.S.S.G. § 2D1.1 applies to the offense conduct in Count Three.

16 e. The relevant conduct includes the distribution and possession with
17 intent to distribute less than 250 milligrams of d-methamphetamine hydrochloride in the form
18 commonly known as "ice", as such, the base offense level under U.S.S.G. § 2D1.1(c)(14) is 12.

19 f. If the defendant allocutes to the crime charged in Count Three of
20 the Indictment to the satisfaction of the Court, a two-level reduction in the offense level for
21 acceptance of responsibility is warranted under U.S.S.G. § 3E1.1(a).

22 g. Accordingly, the applicable U.S.S.G. offense level is 10.

23 Criminal History Category

24 h. There is no stipulation as to Criminal History category.
25

1 Sentencing Range

2 i. Based upon the calculations set forth above, and provided the
3 defendant's Criminal History is Category I, the stipulated Sentencing Guidelines range is 6 to
4 12 months. In addition, after determining the defendant's ability to pay, the Court may impose
5 a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 10, the applicable fine range is \$2,000
6 to \$20,000. The defendant has been advised and understands that the stipulated Guidelines
7 range is merely a recommendation to the Court. The Court can reject it without permitting the
8 defendant to withdraw his plea of guilty and can impose a sentence that is more severe than he
9 anticipates. The defendant also understands that the Sentencing Guidelines are merely
10 advisory, and the Court may impose any reasonable sentence up to and including the maximum
11 penalties set by law after taking into account the factors enumerated in Title 18, United States
Code, Section 3553(a).

12 6. It is understood that the sentence to be imposed upon the defendant is
13 within the sole discretion of the Court. This Office cannot, and does not, make any promise or
14 representation as to what sentence the defendant will receive. However, this Office will inform
15 the Probation Department and the Court of (a) this Agreement; (b) the nature and extent of the
16 defendant's activities with respect to this case and all other activities of the defendant which this
17 Office deems relevant to sentencing; and (c) the nature and extent of the defendant's
18 cooperation with this Office. In so doing, this Office may use any information it deems
19 relevant, including information provided by the defendant both prior to and subsequent to the
signing of this Agreement.

20 7. If the United States determines, in its sole discretion, that the defendant has
21 provided "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e), the
22 United States will request the Court to depart below the guideline range to whatever guidelines
23 range or sentence of incarceration the United States, in its sole discretion, deems appropriate or
24 may, within one year after sentencing herein, move the Court to order relief pursuant to Rule
25 35, Rules of Criminal Procedure to whatever guidelines range or sentence of incarceration the

1 United States, in its sole discretion, deems appropriate. Defendant acknowledges that the
2 substantial assistance determination is solely up to the Office of the United States Attorney and
3 that the United States has made no promise, implied or otherwise, that defendant will be granted
4 a departure for substantial assistance.

5 The United States agrees to consider the totality of the circumstances, as they relate to
6 the following factors, in determining whether defendant has provided "substantial assistance"
7 which would merit a government request for a downward departure from the applicable
8 guideline sentencing range:

- 9 a. the United States' evaluation of the significance and usefulness of
10 any assistance rendered by defendant;
- 11 b. the truthfulness, completeness, and reliability of any information or
12 testimony provided by defendant;
- 13 c. the nature and extent of defendant's assistance;
- 14 d. any injuries suffered or any danger or risk of injury to defendant or
15 defendant's family resulting from any assistance provided by defendant; and
- 16 e. the timeliness of any assistance provided by defendant.

17 It is understood that even if a motion for departure is made by the United States, based
18 upon defendant's perceived substantial assistance, the final decision as to how much, if any,
19 reduction in sentence is warranted because of that assistance, rests solely with the District
20 Court.

21 8. It is understood that, should this Office determine either that the defendant
22 has not provided substantial assistance in an investigation or prosecution, or that the defendant
23 has violated any provision of this Agreement, such a determination will release this Office from
24 any obligation to file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines and from
25 Title 18, United States Code, Section 3553(e), but will not entitle him to withdraw his guilty
plea once it has been entered. In addition, it is understood that, should this Office determine,
subsequent to the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines,

1 that the defendant has violated any provision of this Agreement, this Office shall have the right
2 to withdraw such motion.

3 9. It is understood that, should the defendant commit any further crimes or
4 should it be determined that he has given false, incomplete, or misleading testimony or
5 information, or should he otherwise violate any provision of this Agreement, the defendant shall
6 thereafter be subject to prosecution for any federal criminal violation of which this Office has
7 knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-
8 barred by the applicable statute of limitations on the date of the signing of this Agreement may
9 be commenced against the defendant, notwithstanding the expiration of the statute of limitations
10 between the signing of this Agreement and the commencement of such prosecution. It is the
11 intent of this Agreement to waive all defenses based on the statute of limitations with respect to
any prosecution that is not time-barred on the date that this Agreement is signed.

12 10. Defendant is advised and understands that to establish a violation of Title
13 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), distribution and possession with
14 the intent to distribute a controlled substance, as charged in Count Three of the Indictment, the
government must prove each of the following elements beyond a reasonable doubt:

15 a. First, the defendant knowingly delivered d-methamphetamine
16 hydrochloride, in a form commonly known as "ice", to another person; and

17 b. Second, the defendant knew it was ice, or some other prohibited
18 drug.

19 11. The defendant acknowledges that he has been advised of his rights as set
20 forth below prior to entering into this Agreement. Specifically, defendant has been fully
21 advised of, has had sufficient opportunity to reflect upon, and understands the following:

22 a. the nature and elements of the charges and the maximum possible
23 penalty provided by law;

24 b. his right to be represented by an attorney;
25

1 c. his right to plead not guilty and the right to be tried by a jury and at
2 that trial, the right to be represented by counsel, the right to confront and cross-examine
3 witnesses against him, and the right not to be compelled to incriminate himself, that is, the right
4 not to testify;

5 d. that if he pleads guilty, there will not be a further trial of any kind
6 on the charges to which such plea is entered so that by entering into this Agreement, he waives,
7 that is, gives up, the right to a trial; and

8 e. that, upon entry of a plea of guilty, or thereafter, the Court may ask
9 him questions about the offenses to which he has pled, under oath, and that if he answers these
10 questions under oath, on the record, his answers may later be used against him in a prosecution
11 for perjury or false statement if an answer is untrue.

12 12. Being fully advised of his rights as set forth in the preceding paragraph, the
13 defendant represents that:

14 a. the agreement is voluntary and not a result of any force, threats or
15 promises apart from this Agreement;

16 b. he reads, speaks, writes and understands English and has read and
17 understood this Agreement or has had a qualified interpreter read this Agreement to him in a
18 language that he understands, and that he fully understood such translation; and

19 c. he is satisfied with the representation provided to him by his
20 counsel.

21 13. It is understood that in the event that it is determined that the defendant
22 had committed any further crimes, given false, incomplete, or misleading testimony or
23 information, or otherwise violated any provision of this Agreement, (a) all statements made by
24 the defendant to this Office or other designated law enforcement agents, and any testimony
25 given by the defendant before a grand jury or other tribunal, whether prior to or subsequent to
the signing of this Agreement, and any leads from such statements or testimony shall be
admissible in evidence in any criminal proceeding brought against the defendant; and (b) the
defendant shall assert no claim under the United States Constitution, any statute, Rule 11(f)

1 of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any
2 other federal rule that such statements or any leads therefrom should be suppressed. It is the
3 intent of this Agreement to waive all rights in the foregoing respects.

4 14. In exchange for the government's concessions in this Agreement, the
5 defendant waives any right to appeal this conviction or to collaterally attack this conviction.
6 Defendant reserves the right to appeal the sentence imposed in this case. However, it is further
7 agreed: (a) that the defendant will neither appeal, nor otherwise litigate under Title 28, United
8 States Code, Section 2255 and/or Section 2241, the conviction and any sentence within or
9 below the stipulated Sentencing Guideline range; and (b) that the government will not appeal
10 any sentence within or above the stipulated Sentencing Guideline range. This provision is
11 binding on the parties even if the Court employs a Guidelines analysis different from that
12 stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that
13 is not foreclosed by this provision will be limited to that portion of the sentencing calculation
14 that is inconsistent with (or not addressed by) the above stipulation.

15 15. The defendant agrees to forfeit, abandon, give up, and give away to the
16 United States prior to the date of the sentencing hearing, any right, title and interest the
17 defendant may have in property subject to criminal forfeiture pursuant to Title 21, United States
18 Code, Section 853, and Title 18, United States Code, Section 924(d)(1). It is further agreed that
19 any other items of property seized in the search of the defendant, his vehicle(s) and the
20 defendant's home(s), not already returned to the defendant, are abandoned by the defendant and
21 shall accordingly be used, transferred, or disposed of at the discretion of the seizing agency.

22 16. By this Agreement the defendant not only agrees to forfeit all interests in
23 the property referred to in the above paragraph, but agrees to take whatever steps are necessary
24 to convey any and all of his right, title and interest in such property to the United States. These
25 steps include but are not limited to the surrender of title, the signing of a quit claim deed, the
signing of a consent decree, the signing of abandonment papers, the signing of a stipulation of
facts regarding the transfer and basis for the forfeiture, and the signing of any other documents
necessary to effectuate such transfers. The defendant further agrees to fully assist the

government in the recovery and return to the United States of any assets or portions thereof as described above wherever located.

17. This Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

DATED: 8-26-08


LAWRENCE KALEN
Defendant

DATED: 8/26/08


BRUCE L. BERLINE, ESQ.
Attorney for Defendant

LEONARDO M. RAPADAS
United States Attorney
District of the Northern Mariana Islands

DATED: 8/27/08


ERIC S. O'MALLEY
Assistant U.S. Attorney